



1-29-04

Image 1636RCE

PTO/SB/30 (08-03)

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**Request  
For  
Continued Examination (RCE)  
Transmittal**Address to:  
Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Application Number	09/674,109
Filing Date	June 21, 2001
First Named Inventor	A. DIU-HERCEND et al
Art Unit	1636
Examiner Name	G. Leffers
Attorney Docket Number	446.022

**This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.**  
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

- a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
- i. ☐ Consider the arguments in the Appeal Brief or Rely Brief previously filed on \_\_\_\_\_
- ii. ☐ Other \_\_\_\_\_
- b. ☒ Enclosed
- i. ☒ Amendment/Reply
- iii. ☐ Information Disclosure Statement (IDS)
- ii. ☐ Affidavit(s)/ Declaration(s)
- iv. ☒ Other Petition

**2. Miscellaneous**

- a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
- b. ☐ Other \_\_\_\_\_

**3. Fees**

- The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.
- The Director is hereby authorized to charge the following fees, or credit any overpayments, to
- a. ☒ Deposit Account No. 02-2275
- i. ☒ RCE fee required under 37 CFR 1.17(e)
- ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17)
- iii. ☐ Other \_\_\_\_\_
- b. ☐ Check in the amount of \$ \_\_\_\_\_ enclosed
- c. ☒ Payment by credit card (Form PTO-2038 enclosed)

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.****SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED**

Name (Print/Type)	Charles A. Muserlian	Registration No. (Attorney/Agent)	19,683
Signature	<i>Charles A. Muserlian</i>	Date	Jan. 27 2004

**CERTIFICATE OF MAILING OR TRANSMISSION**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Name (Print/Type)	Charles A. Muserlian
Signature	<i>Charles A. Muserlian</i>
Date	Jan. 27 2004

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: : G. Leffers  
DIU-HERCEND et al :  
Serial No.: 09/674,109 : Group: 1636  
Filed: June 21, 2001 :  
For: METHOD ...S.CERVISIAE :

475 Park Avenue South  
New York, N.Y. 10016  
January 27, 2004

**RESPONSE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The present RCE is being filed in order to correct an error in the election of species in response to the restriction requirement set forth in the office action of April 28, 2003.


In the said original application, the Examiner required a four way restriction requirement between group I including claims 13, 15, 16 and 18 to 28, group II including claims 13, 14, 16, 17 and 19 to 28, group III including claims 13, 15, 16 and 18 to 28 and group IV including claims 13, 14, 16, 17, and 19 to 28. The Examiner indicated that each of the four groups are drawn to an in vitro or in vivo assay for screening anti-mycotic substances using a particular essential gene selected from a Markush group of specific genes.

Applicants traverse the restriction requirement since there is a single generic concept set forth in the claims which are all properly examined together using a method for screening of an anti-mycotic functionally similar mycete gene of a Markush group thereof and all of the steps are the same with only the gene being different. Therefore, it is deemed that there is but a single inventive concept and all of the claims should be examined together in the same application.

To be fully responsive, Applicants elected group III with traverse. In the response dated August 26, 2002, Applicants' attorney inadvertently elected with traverse, the species YDR181c. The gene to be selected with traverse is gene YIL019w. Applicants are submitting herewith a petition concerning the restriction requirement.

Since the first office action issued more than two years after the filing of the application and it was merely a restriction requirement, Applicants request a prompt examination on the merits.

Respectfully submitted,  
Muserlian, Lucas and Mercanti

  
\_\_\_\_\_  
Charles A. Muserlian, 19,683  
Attorney for Applicants  
Tel. # (212) 661-8000

CAM:ds  
Enclosures